

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 487 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No @@

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

BHIKALAL DHAMAJI THAKKAR

Versus

BHAVARLAL RAFIKHAN KOHAR

Appearance:

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.C.PATEL

Date of decision: 16/09/98

ORAL JUDGEMENT

(Per : Panchal, J.)

At the request of learned Counsel appearing for the parties, the appeal is taken-up for final hearing today.

This appeal, which is filed under section 173 of the Motor Vehicles Act, 1988, is directed against judgment and award dated October 3, 1997 rendered by the Motor Accident Claims Tribunal (Auxi.), Kutch at Bhuj in M.A.C.Petition no. 363/89 by which the Tribunal has awarded a sum of Rs. 1,50,000/- with interest at the rate of 15% per annum from the date of application till the date of realisation and proportionate costs as compensation, to the claimant-respondent herein.

2. The accident in question took place on May 14, 1989 on Chitrod - Gagodar Highway near Mevasa village. The respondent was travelling in truck bearing registration no. GRN-4537 with his goods and was going to Bagara. Another truck bearing registration no. GQY-4756, which was driven rashly and negligently by appellant no.1, dashed with truck bearing registration no.GRN-4537. As a result of accident, the respondent sustained injuries and also fracture. He was treated at G.K.General Hospital, Bhuj and was admitted as an indoor patient for more than a month. He instituted M.A.C.Petition no. 363/89 before Motor Accident Claims Tribunal (Auxi.), Kutch at Bhuj and claimed compensation of Rs. 1,50,000/-.

3. The Claim Petition was contested by appellant no.1 by filing written statement at exh.19. Appellant no.2 filed written statement at exh.20. By filing the written statements, the appellants pleaded that the driver of truck bearing registration no. GRN-4537 was rash and negligent in driving the truck and, therefore, they were not liable to answer the claim advanced by the claimant.

4. Having regard to the pleadings of parties, necessary issues were framed by the Tribunal for determination. On consideration of the evidence, the Tribunal held that the accident took place because of rash and negligent driving of tanker bearing registration no.GQY-4756 by appellant no.1. After taking into consideration the evidence led by the respondent, the Tribunal held that the disability suffered by the respondent of the body as a whole was to the extent of 50%. On consideration of evidence with regard to the income of the claimant, the Tribunal deduced that an amount of Rs. 2,53,000/- was awardable to the respondent by way of compensation. However, as claim was restricted to Rs.1,50,000/-, the Tribunal awarded the said amount as compensation with interest at the rate of 15% per annum from the date of application till the date of realisation and proportionate costs.

5. The appellants have challenged the award on numerous grounds, one of which is that the Tribunal should not have awarded interest at the rate of 15% per annum while awarding compensation to the claimant.

6. Having gone through the record of the case, we are of the opinion that a just conclusion has been arrived at by the Tribunal that the driver of tanker bearing registration no. GQY-4756 was rash and negligent in driving the said vehicle and his negligence resulted into accident in question. The finding arrived at by the Tribunal regarding negligence is supported by the contents of F.I.R. which was lodged immediately after the accident as well as panchnama of place of accident. Therefore, the said finding is hereby upheld.

7. Having regard to the medical evidence on record, the Tribunal has rightly concluded that the disability suffered by the respondent of the body as a whole was of 50%. The compensation awarded to the claimant under different heads cannot be said to be excessive at all. As found by the Tribunal, the respondent was entitled to get an amount of Rs.2,53,000/- as compensation, but as the claim was restricted to Rs. 1,50,000/-, compensation was accordingly awarded. However, we find that the Tribunal was not justified in awarding compensation to the claimant with 15% interest from the date of application till the date of realisation. Having regard to the facts and circumstances of the case, the Tribunal ought to have directed the appellants to pay compensation with 12% interest from the date of application till the date of realisation and, therefore, to that extent award requires to be modified. We may state that in this very

accident, Polaram Bhil had also expired and his dependents had filed M.A.C.Petition no. 364/89 claiming compensation of Rs. 2,75,000/-. The Tribunal awarded the entire claim with 15% interest from the date of application till the date of realisation. Against the said award, First Appeal no. 486/98 was filed. The award passed by the Tribunal is confirmed, but the rate of interest has been reduced from 15% to 12% and award was accordingly modified by order dated August 14, 1998 rendered by Division Bench comprising S.M.Soni & H.R.Shelat, JJ.

For the foregoing reasons, appeal partly succeeds. It is directed that the respondent shall be entitled to get compensation of Rs.1,50,000/- with 12% interest from the date of application till the date of realisation and proportionate costs. The award passed by the Tribunal in M.A.C. Petition no. 363/89 stands accordingly modified. The appellants are directed to deposit the remaining amount of compensation payable to the respondent within six weeks from today. On full amount being deposited, the amount of compensation shall be invested and disbursed in terms of the impugned award. The appeal is partly allowed, with no order as to costs.

(patel)